IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

WP(C).No. 13772 of 2006(M)

AGAINST THE ORDER IN & OS 58/2006 IN
OS.30/2005 of MUNSIFF COURT,ATTINGAL

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PETITIONER:

SADASIVAN, AGED 63 YEARS,
S/O.KRISHNAN, KUZHIVILA VEEDU, KARETTE,
VAMAPURAM, PULIMATHU VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.C.R.SIVAKUMAR
SMT.G.VIDYA

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, COLLECTORATE,
THIRUVANANTHAPURAM.

2. THE REVENUE DIVISIONAL OFFICER CUM
SUB DIVISIONAL MAGISTRATE, OFFICE OF THE
REVENUE DIVISIONAL OFFICE, THIRUVANANTHAPURAM.

3. THE ADDITIONAL TAHSILDAR,
TALUK OFFICE, CHIRAYINKEEZHU, THIRUVANANTHAPURAM.

4. THE SUB INSPECTOR OF POLICE,
KILIMANOOR POLICE STATION, THIRUVANANTHAPURAM.

5. SANAKAN, S/O.VAMADEVAN, KUZHIVILA VEEDU,
KARETTE, VAMANAPURAM, THIRUVANANTHAPURAM.

6. AJITHA, W/O.SANAKAN, KUZHIVILA VEEDU,
KARETTE, VAMANAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.M.TRIPTEN
GOVERNMENT PLEADER SRI.PUZHAKKARA MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE O.S.NO.30/2005.

EXT.P2:- TRUE COPY OF THE O.S.NO.58/2006.

EXT.P3:- TRUE COPY OF THE NOTICE IN M.C.NO.72/2006 OF THE 2ND RESPONDENT DATED 03/03/2006.

EXT.P4:- TRUE COPY OF THE INTIMATION DATED 04/05/2006.

EXT.P5:- TRUE COPY OF THE SCENE MAHAZOR DATED 06/05/2006.

RESPONDENT'S EXHIBITS:-

EXT.R6(a):- TRUE COPY OF THE PLAN AND REPORT DATED 13/2/2006.

EXT.R6(b):- TRUE COPY OF THE MIKE SANCTION ORDER DATED 08/03/2002.

EXT.R6(d):- TRUE COPY OF THE GIFT DEED NO.3580/95 DATED 24/11/95 EXECUTED BY RADHA IN FAVOUR OF 6TH RESPONDENT.

EXT.R6(e):- TRUE COPY OF THE SETTLEMENT DEED NO.2849/02 DATED 29/10/2002 EXECUTED BY THE 6TH RESPONDENT INFAVOUR OF HER MINOR CHILDREN.

EXT.R6(f):- TRUE COPY OF THE LAND TAX RECEIPT DATED 27/7/06 INFAVOUR OF 5&6TH RESPONDENTS CHILDREN.

EXT.R6(g):- TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED 3/2/06 ISSUED BY PULIMATH GRAMA PANCHAYATH INFAVOUR OF 5 & 6TH RESPONDENTS CHILDREN.

EXT.R6(h):- TRUE COPY OF THE COMMON ORDER IN I.A.NO.243/05 IN O.S.NO.30/05 AND I.A.272/06 IN O.S.NO.58/06 OF MUNSIFF COURT, ATTINGAL.

EXT.R6(i):- TRUE COPY OF THE CMA NO.25/06 PENDING BEFORE SUB COURT, ATTINGAL.

EXT.R6(j):- TRUE COPY OF FIR NO.775/05 DATED 15/11/2005 OF KILIMANOOR POLICE STATION.

[TRUE COPY]

PA TO JUDGE

R.BASANT, J

W.P.C.No.13772 of 2006

Dated this the 28th day of November 2006

O R D E R

The petitioner is B party No.1 in M.C.No.72 of 2006 pending before the Sub Divisional Magistrate, Thiruvananthapuram. The said proceedings have been initiated under Section 145 of Cr.P.C. Order dated 28/03/2004, appointing a receiver has been passed, it is evident from Ext.P4. The petitioner has come to this court, challenging Exts.P3 and P4 orders passed by the Sub Divisional Magistrate.

2. The learned counsel for the petitioner B party No.1 and A party have been heard. The dispute is about administration and possession of a temple by name Karette Kuzhuvila Subrahmanya Temple. There is a dispute between A and B parties about possession and right to administer the said temple. On the report received by the Sub Divisional Magistrate from the Sub Inspector of Police, Kilimanoor police station, the Sub Divisional Magistrate was satisfied that threat to the law and order situation prevails consequent to the dispute over the ownership of the said temple. It is accordingly that the Sub Divisional Magistrate has passed the relevant order under Section 145 Cr.P.C (a copy of which is produced as Ext.P3 dated 03/03/2006). Though the subsequent order passed under Section 146 Cr.P.C dated 28/03/2006 has not been produced and no specific challenge is mounted against that order, it is evident from Ext.P4 that

in pursuance of that order, the Additional Tahsildar of Chirayinkeezhu taluk is appointed as receiver. It is further evident from Ext.P5 that the said receiver had taken charge as per the mahazer (copy of which is produced as Ext.P5 dated 06/05/2006).

3. The petitioner challenges the initiation of proceedings under Section 145 Cr.P.C. There are civil disputes pending between the parties in respect of possession and right to administer the temple, it is submitted. There is no contention before me that any interim arrangement as to possession has been made by the civil courts in any of the pending proceedings. In these circumstances, resort to the provisions of Section 145 Cr.P.C by the Sub Divisional Magistrate cannot be said to be without jurisdiction or improper. No interim arrangement as to possession having been made by the civil courts and the Sub Divisional/Executive Magistrate having perceived imminent threat to the law and order situation, it cannot be held that the invocation of powers under Section 146 Cr.P.C to appoint a receiver is not justified.

4. Ext.P3 order clearly shows that the Sub Divisional Magistrate has followed the procedure prescribed under Section 145 Cr.P.C and has given the parties the option to appear before him and raise their respective contentions regarding their possession of the temple in dispute. I am certainly of the opinion that it is for the parties to avail of the opportunity granted to them by the Sub

Divisional Magistrate in Ext.P3 order and appear before the Sub Divisional Magistrate and produce all the relevant documents in support of their case that they are in possession of the temple or have been dispossessed within a period stipulated under Section 145 Cr.P.C. It is not necessary for this court to express any opinion on merits about the contentions which the parties can raise before the Sub Divisional Magistrate.

5. I do not, in these circumstances, find any merit in the prayer to interfere with Ext.P3 order by invocation of the jurisdiction available to this court under Article 226 of the Constitution. This writ petition accordingly fails and is dismissed. In the circumstances of this case, I direct that the Sub Divisional Magistrate shall proceed with the enquiry under Section 145 Cr.P.C and pass appropriate final orders as expeditiously as possible, at any rate, within a period of four months from the date on which a copy of this order is placed before the learned Magistrate. The Receiver who has taken over the temple can continue to function - of course under the directions, if any of the Sub Divisional Magistrate.

Hand over copy of this order to both counsel to communicate the order to the Sub Divisional Magistrate forthwith.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006